

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 256 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

SAURASHTRA BOTTLING P LTD

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Appearance:

Mr.Mihir Joshi for MR MANISH R BHATT for Petitioner  
MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether the Appellate Tribunal is right in law and on facts in directing the ITO to allow 100% depreciation on the cost of bottles and wooden shells ?"

2. The assessee claimed before the I.T.O. that the containers consisting of bottles and crates constituted "plant" within the meaning of section 43(3) of the Act and since the cost of each bottle and crate was less than Rs. 750/-, 100% depreciation was allowable for each container. The I.T.O. rejected the claim of the assessee. The C.I.T. (Appeals) however accepted it. The Tribunal dismissed the appeal of the Revenue. The question whether bottles and crates used by the assessee who was doing the business of manufacturing and selling soft drinks were eligible for depreciation allowances under section 32(1)(ii) of the Act was decided by us in I.T.R. No. 206 of 1985 on 13.2.98. We have taken the view that bottles and crates of the assessee which were used for its business were "plant" and therefore, the assessee could claim depreciation under section 32(1)(ii) of the Act. Since the facts and points involved are same, we do not reproduce the facts from the record. Following our decision in I.T.R. no.206 of 1985, we hold that bottles and containers used by the assessee constitute "plant" and the entire purchase price thereof was allowable as depreciation under section 32(1)(ii) of the Act. The question referred to us is therefore, answered in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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